LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 29 1968
JOHN F. DAVIS, CLERK

No. 852

Robert W. Hagopian, Pro Se

174 Commonwealth Avenue

Boston, Massachusetts

UNITED STATES SUPREME COURT

JURISDICTIONAL STATEMENT

FACTS

Appellant (petitioner) petitioned the Massachusetts Supreme Judicial Court (in an action of law) to be examined as an attorney at law pursuant to Massachusetts General Laws, Chapter 221, Section 37:

> "A citizen of the United States, whether man or woman, may, if over twenty-one, file a petition in the supreme judicial or superior court to be examined for admission as an attorney at law, and, if found qualified, to be admitted as such; whereupon, unless the court otherwise orders, the petition shall be referred to the board of bar examiners to ascertain his requirements and qualifications. If the board reports that the petitioner is of good moral character and of sufficient acquirements and qualifications, and recommends his admission, he shall be admitted unless the court otherwise determines, and thereafter may practice in all courts of the commonwealth..."

The Supreme Judicial Court has exclusive jurisdiction as to the admission of attorneys to the bar. It has the sole right to determine the qualifications of mental aptitude and moral character of applicants. Opinion of the Justices, 279, Mass. 607.

Appellant alleged he did not meet the educational requirements propounded by the Supreme Judicial Court in its Rule 3:01 (2) (b):

> "Every applicant shall have graduated from a law school having a three-year course and requiring students to devote substantially all of their working time to their studies, called a full-time law school, or a law school having a course of not less than four school years equivalent in the number of working hours to a three-year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school..."

Petitioner prayed relief in two forms: First: that the Court (in banc) waive its rules upon the facts of petitioner's case set forth in his pleadings: Second: that the Supreme Judicial Court strike down the unnecessary and exclusive provisions of Rule 3:01 (2) (b), and amend its rule to open its doors to all who are mentally and morally fit to practice law.

The Chief Justice of the Supreme Judicial Court waived the entry-fee and referred the matter for hearing to a single justice. On April 15, 1968, a hearing was held by Justice Spaulding of the Supreme Judicial Court. Petitioner tendered evidence to prove he was mentally fit to practice law, and to prove the requirements of Rule 3:01 (2) (b) were arbitrary and unreasonable, in that they afford applicants to the bar no other opportunity to prove their competency. Justice Spaulding ruled that he would have to take this matter (i.e., of hearing evidence) up with the full bench.

On May 1, 1968, without further proceedings, the full bench, all concurring, dismissed appellant's petition. A copy of the order is attached to this statement and is made a part of it.

ISSUES

Petitioner by his pleadings properly raised the following issues in his petition before the Supreme Judicial Court which had original, appellate, and final decision on these issues concurrently.

(1) The practice of law is a right, liberty, priviledge, and property duly protected by the 14th Amendment to the Federal Constitution: Schware vs. Board of Bar Examiners, 353 U. S. 232,238. Rule 3:01 (2) (b) of the Supreme Judical Court creates an unnecessary and unreasonable burden on the right to practice law and therefore violates the Due Process Clause of the 14th Amendment. Petitioner contends that the necessary and exclusive provisions in Rule 3:01 (2) (b), requiring an applicant to have had a relationship with a private institution, divorced from state regulation or control, offends the dictates of reason in that it is the sole means of proving competency.

(2) The application of Rule 3:01 (2) (b) violates the Due Process Clause of the 14th Amendment. The state impliedly and involuntarily delegates its authority to law schools and thereby makes them its agents to declare who is competent and who is not. The rules, conduct, and admission requirments of law schools are not founded on the type of fair play implied by due process. Neither is competency their sole basis of qualification. Petitioner alleged that he is being refused admission to law school on grounds that are irrelevant to his competency.

(3) Appellant contents that the exclusive creation of a class of law school graduates creates a resultant monopoly. It is not an intentional conscious monopoly as those subject to anti-trust legislation, or a constitutional monopoly as are copyrights and patents, or one of governmental character. It is a monopoly of a trade, and repugnant to the Constitution.

(4) Appellant contends that Rule 3:01 (2) (b) strikes at the heart of the Equal Protection Clause of the 14th Amendment. To classify is to instill inequality. The classification by this rule is not the incidence of equal protection, but the image of discrimination. It closes the right to practice law to those who cannot afford the tuition of a private institution, to those who are denied or barred by these institutions, or to those who refuse to comply or accept the rules of these institutions, some of which are not founded on fair play. This rule denies equality.

Because the subject of law is purely mental and there is nothing intrinsic to its study, the requirement that applicants to the bar be graduates of a private law school does not reasonably relate to the end purpose. Rule 3:01 (2) (b) establishes a class which is not of a "generic category": Morey vs. Doud, 354 U. S. 457. The requirements establish a class parallel to one that was struck down in Smith vs. Texas, 233 U. S. 630,638.

> "The statute does not require the brakeman to prove his fitness, though it does prevent all others from showing that they are competent. This act prescribes no other qualification, for appointment as conductor, than that for two years the applicant should have been a brakeman on a freight train, but affords no opportunity to any others to prove their fitness. It

thus absolutely excludes the whole body of the public, including many railroad men, from the right to secure employment as conductor on a freight train."

Referring to this statute, the court in Graves vs. State of Minnesota, 272 U. S. 425,429, stated:

"These manifestly involve very different considerations from those relating to such professions as dentistry, requiring a high degree of scientific training."

Appellant contends that law is distinguishable from medicine, dentistry, and trades. These professions require a learning process that involves the different senses. Many scientific professions require laboratory work and many trades field experience. The study of law is purely mental and may be mastered external to the laboratory, classroom, or field.

Petitioner contends that due to the nature of law, the state has adequate means to test an applicant's ability and competency. This of course might not hold true for other professions, but it certainly must hold true for a purely mental subject. Petitioner was denied all opportunity by Rule 3:01 (2) (b) to prove his fitness by examination. Appellant further alleges that Rule 3:01 (2) (b) creates a classification which is beyond the "scope of discretion". It is the necessity and exclusiveness (i.e., the means) which is attacked, not the end purpose, to insure proper qualifications.

(5) Appellant also raises the issue of the refusal of the Supreme Judicial Court to hear evidence of his competency. This was a procedure that violated fair play under the Due Process Clause of the 14th Amendment. This is a federal question: Goldsmith vs. Board of Tax Appeals 270 U. S. 117: Willner vs. Committee on Character and Fitness, 373 U. S. 96,102.

JURISDICATION

Appellant contends that jurisdication of the Supreme Court arises under Article III, Section 2, of the Constitution, and Section 1257 (2) of Title 28 U. S. Code.

Petitioner made an application to be allowed to practice the profession of law. Appellant alleges this creates his standing to sue.

"A claim of a present right to admission to the bar of a state and denial of that right is a controversy": In Re Summers 325 U. S. 561,568. That controversy is a justiciable controversy: Willner vs. Committee on Character and Fitness 373 U. S. 96,102.

Petitioner raised the federal issues properly by pleading in his original petition, which was made part of the record. He has exhausted all his remedies of practice, statutes, Rules of the Supreme Judicial Court, and/or petition to waive the rules. The final order dismissing the petitioner's petition was made by the full bench of the Supreme Judicial Court.

The final order dismissing the petition did not expressly rule on the federal issues, but, by denying the second prayer of relief asked by the petitioner, the final order necessarily ruled on the federal questions exclusively which were squarely presented and properly raised.

With respect to appellant's contention that the denial of hearing evidence is a proper issue of a federal question, no opportunity was given petitioner to assert his federal right under the Due Process Clause of the 14th Amendment. Justice Holmes said:

> "But when the act complained of is the act of the [State] Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendent was not bound to contemplate a decision of the case before his evidence was heard, and therefore, was not bound to ask a ruling or take other precautions in advance." Saunders vs. Shaw and the Board of Drainage Commissioners of the Bayou Terre-Aux-Boeufs Drainage District et al. 244 U. S. 317.

Petitioner made an application to be allowed to practice the profession of law. Appellant alleges this creates his standing to sue.

"A claim of a present right to admission to the bar of a state and denial of that right is a controversy": In Re Summers 325 U. S. 561,568. That controversy is a justiciable controversy: Willner vs. Committee on Character and Fitness 373 U. S. 96,102.

Petitioner raised the federal issues properly by pleading in his original petition, which was made part of the record. He has exhausted all his remedies of practice, statutes, Rules of the Supreme Judicial Court, and/or petition to waive the rules. The final order dismissing the petitioner's petition was made by the full bench of the Supreme Judicial Court.

The final order dismissing the petition did not expressly rule on the federal issues, but, by denying the second prayer of relief asked by the petitioner, the final order necessarily ruled on the federal questions exclusively which were squarely presented and properly raised.

With respect to appellant's contention that the denial of hearing evidence is a proper issue of a federal question, no opportunity was given petitioner to assert his federal right under the Due Process Clause of the 14th Amendment. Justice Holmes said:

> "But when the act complained of is the act of the [State] Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendent was not bound to contemplate a decision of the case before his evidence was heard, and therefore, was not bound to ask a ruling or take other precautions in advance." Saunders vs. Shaw and the Board of Drainage Commissioners of the Bayou Terre-Aux-Boeufs Drainage District et al. 244 U. S. 317.

To the best knowledge of appellant, these issues have never been presented to this Court or to a lower Federal Court.

Robert W. Hagopian, Pro Se

174 Commonwealth Avenue

Boston, Massachusetts

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

IN RE ROBERT W. HAGOPIAN.

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

No. 352. Decided October 21, 1968.

PER CURIAM.

The motion for leave to file an amended jurisdictional statement is granted. The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.